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300 NLRB No. 59

D--1562
Portland, OR

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CORNO AND SON, INC.

and

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 555, AFL--CIO, CLC

Cases 36--CA--6366
36--CA--6367
36--CA--6381
36--CA--6382

DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Raudabaugh

Upon charges filed by the Union on May 8, 1990,[1] and on May 15 as amended on June 8, the General Counsel of the National Labor Relations Board issued a complaint on June 11 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges, in substance, that at all times material the Union has been the designated collective-bargaining representative of the Respondent's employees in two appropriate units and has been recognized as such by the Respondent; that such recognition has been embodied in successive collective-bargaining agreements, the two most recent of which were effective until July 7, 1989, and July 11, 1989, respectively; that the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the employees in each unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. The complaint also alleges, in substance, that since on or about February 1, the Respondent has discontinued the contributions to

[1] Unless otherwise indicated, all dates hereafter are in 1990.

the Union's health and welfare and pension funds required by the expired collective-bargaining agreements. The complaint further alleges that since on or about April 25, the Respondent has refused to meet with the Union at reasonable times and places for the purposes of collective bargaining. The complaint further alleges that by the foregoing conduct the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act. On June 22, the Respondent filed an answer. On August 23, the Respondent filed an amended answer admitting in full the allegations in the complaint.

On September 7, the General Counsel filed a Motion for Summary Judgment, with exhibits attached, submitting that the Respondent's amended answer raised no issues of fact or law that require a hearing. Subsequently, on September 10, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the Motion for Summary Judgment are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its amended answer to the complaint, the Respondent admits that the units described in the complaint are appropriate for collective bargaining under the Act, that the Union is the exclusive representative of these units, that the Respondent's refusal to adhere to the benefit fund requirements of the contracts after February 1 was without notice to the Union, and that it has refused to meet for collective-bargaining purposes since April 25.

Accordingly, because we find that all of the complaint allegations have been admitted, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company is an Oregon corporation with an office and place of business in Portland, Oregon, where it is engaged in the retail sale of meats and groceries. During the past 12 months, which period is representative of all times material, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000. During the same period, the Respondent caused to be transferred and delivered to its facilities within the State of Oregon goods and materials valued in excess of $50,000 directly from sources outside Oregon, or from suppliers within Oregon that in turn obtained such goods and materials directly from sources outside Oregon. We find that the Company is an employer within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At all times material the Union has been recognized as the exclusive collective-bargaining representative of the Respondent's employees in the following appropriate units:

> All employees of Respondent employed in the grocery department at its Portland, Oregon location, but excluding office clerical employees, guards and supervisors as defined in the Act, meat department employees and all other employees [grocery unit].
>
> All employees of Respondent employed in its meat department at its Portland, Oregon location, but excluding office clerical employees, guards and supervisors as defined in the Act, grocery department employees and all other employees [meat department unit].

Such recognitions have been embodied in a series of collective-bargaining agreements, the most recent of which were effective until July 7, 1989 (meat

department unit) and July 11, 1989 (grocery unit). The Union continues to be the exclusive representative under Section 9(a) of the Act.

On or about February 1, the Respondent discontinued the contributions to the Union's health and welfare and pension funds required by the expired collective-bargaining agreements. These actions were taken without notice to the Union and thus the Union was not afforded an opportunity to bargain with the Respondent as the exclusive representative of the employees in the two units with respect to these acts. Further, since on or about April 25, the Respondent has refused to meet with the Union at reasonable times and places for the purposes of collective bargaining.

Accordingly, we find that the Respondent, as specified in the Conclusions of Law below, has refused to bargain in good faith with the representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By unilaterally departing from its contractual obligations with respect to benefit fund contributions and by refusing to meet with the Union at reasonable times and places for collective bargaining, the Respondent has refused to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to bargain in good faith with the Union, if requested to do so, and, if understandings are reached, to embody the understandings in signed agreements. With respect to the unilateral refusals to make the contractually required benefit fund contributions, we shall order

the Respondent to reestablish those contributions and make the required contributions retroactive to February 1. The Respondent shall make its employees whole for any losses resulting from its failure to make contractual health and welfare and pension fund payments since February 1, in the manner prescribed in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Interest on any money due and owing employees shall be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). The method of determining the additional amounts, if any, owed to the benefit funds is specified in Merryweather Optical Co., 240 NLRB 1213 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Corno and Son, Inc., Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally ceasing to pay the benefit fund contributions established in the collective-bargaining agreements which expired in 1989 without bargaining collectively with the Union in accordance with the requirements of Section 8(a)(5) of the Act.

(b) Refusing to meet at reasonable times and places for the purpose of collective bargaining with the Union as the exclusive representative of the employees in the following two appropriate units:

> All employees of Respondent employed in the grocery department at its Portland, Oregon location, but excluding office clerical employees, guards and supervisors as defined in the Act, meat department employees and all other employees.
>
> All employees of Respondent employed in its meat department at its Portland, Oregon location, but excluding office clerical employees, guards and supervisors as defined in the Act, grocery department employees and all other employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the two units on terms and conditions of employment and, if understandings are reached, embody the understandings in signed agreements.

(b) Reestablish the contractual benefit fund contributions and make the employees whole for any loss of benefits they may have suffered by the failure to abide by the contracts, as set forth in the remedy section of this Decision and Order.

(c) Make the appropriate benefit fund contributions on the employees' behalf that are owing because of the discontinuance of such contributions on or about February 1, 1990, as set forth in the remedy section of this Decision and Order.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payments to employees and benefit fund contributions due under the terms of this Order.

(e) Post at its facility in Portland, Oregon, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including

all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 26, 1990

James M. Stephens, Chairman

Mary Miller Cracraft, Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally cease to pay the benefit fund contributions established in the collective-bargaining agreements that expired in 1989 without bargaining collectively with United Food and Commercial Workers Union, Local 555, AFL--CIO, CLC.

WE WILL NOT refuse to meet at reasonable times and places for the purpose of collective bargaining with the Union as the exclusive representative of our employees in the following two appropriate units:

All employees employed in the grocery department in our Portland, Oregon location, but excluding office clerical employees, guards and supervisors as defined in the Act, meat department employees and all other employees.

All employees employed in the meat department of our Portland, Oregon location, but excluding office clerical employees, guards and supervisors as defined in the Act, grocery department employees and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL reestablish the contractual benefit fund contributions and WE WILL make you whole for any loss of benefits you may have suffered because of our failure to abide by the contract since on or about February 1, 1990, plus interest.

WE WILL, on request, meet at reasonable times and places for the purpose of collective bargaining with the Union as the exclusive representative of all employees in the appropriate units and, if understandings are reached, embody them in signed agreements.

WE WILL make appropriate benefit fund contributions on your behalf that are owing because of our unlawful discontinuance of such contributions on or about February 1, 1990.

CORNO AND SON, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 915 Second Avenue, Room 2948, Seattle, Washington 98174-1078, Telephone 206--442--7472.